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Offshore Petroleum in Australia - Cooperative Governance in a Sea of Federalism

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Since 1980 when jurisdiction over the offshore was finally settled, divisive jurisdictional posturing between the state and federal governments has been reduced. Since then, efforts have concentrated on improving the administration and policy affecting offshore sectors, especially with respect to petroleum resources. In this context, the inclusion of environmental drivers represents a natural progression. Building upon this enhanced responsibility, integration with other maritime sectors would seem to be the next objective for the petroleum sector to pursue. Although now mandated by government policy, integration as a concept challenges sectoral decision-making so fundamentally that the delivery of integrated ocean policy approaches may be frustrated.

Depuis 1980, alors que la compétence sur les régions extracôtières a enfin été déterminée, on a constaté une baisse du nombre de prises de position susceptibles de créer de la dissension entre les gouvernements provinciaux et fédéral. Depuis, les efforts ont surtout porté sur l'amélioration des bases administratives et politiques qui touchent les secteurs extracôtières, en particulier pour ce qui est des ressources en hydrocarbures. Dans ce contexte, l'inclusion d'éléments moteurs environnementaux est une étape qui s'impose tout naturellement. À partir de cette responsabilité accrue, l'intégration avec d'autres secteurs maritimes semble être le prochain objectif que devrait poursuivre le secteur pétrolier. Même si elle est désormais rendue obligatoire par une politique gouvernementale, la notion d'intégration s'oppose si fondamentalement à la prise de décision sectorielle que la mise en œuvre des politiques intégrées sur les océans pourra être affectée.

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Introduction

I. Jurisdictional Settlements and Offshore Petroleum

II. Amending the Offshore Petroleum Legislation

III. Australian Offshore Petroleum Strategy

IV. Environmental Policy and Offshore Petroleum

V. Australia's Oceans Policy

Conclusion

Introduction

It has been stated previously that federalism or divided offshore jurisdiction in the case of oceans governance does not itself cause tensions or contribute generally to bad policy.¹ Rather, it is the decision-making structure within the federal system that determines the amity or enmity of inter-governmental relations. In Australia, offshore hydrocarbon development legislation establishes a shared policy and administration regime, under which the Commonwealth and states are essentially equal partners in decision-making.

The history of the evolution of offshore jurisdiction and the regime for oil and gas has been treated exhaustively elsewhere.² The Commonwealth's

1. Nathan Evans & John Bailey, "Jurisdiction and Offshore Petroleum in Australia: Creating Symmetry Between the Commonwealth and States by Sharing Benefits and Avoiding Costs" (1997) 34:3 *Ocean and Coastal Management* 173-204.

2. Michael Crommelin, "The Mineral Exploration and Production Regime Within the Federal System" in Peter Drysdale & Hirofumi Shibata, eds., *Federalism and Resource Development: The Australian Case* (Sydney: George Allen and Unwin, 1985); Richard G. Hildreth, "Managing Ocean Resources: New Zealand and Australia" (1991) 6 *Int'l J. Mar. & Coast. L.* 89; Donald Rothwell, "The Legal Framework for Ocean and Coastal Management in Australia" (1996) 33 *Ocean and Coastal Management* 41-61.

constitutional capacity to legislate over the offshore is now unambiguous. Ironically, through the very enactment of Commonwealth legislation, constraints on state involvement in offshore policy have been reversed in favour of a cooperative approach. Nowhere is this philosophy more evident than in terms of the oil and gas regime. Indeed, the offshore petroleum regime is deservedly characterized as a true "cooperative governance" model.³

Upon closer observation, it can also be seen that over time the Commonwealth has succeeded in assuming a more assertive role vis-à-vis the states but without undermining the cooperation that sustains the regime.⁴ That is, the precise blend of the Commonwealth and states under enabling legislation does shift according to the political persuasion of particular governments. Because the regime is so firmly established, especially its central tenet of cooperative governance, these shifts do not challenge or endanger the shared approach to decision-making.

Several recent developments in the policy arena further evidence the Commonwealth's maturity as an offshore decision-maker. Over the past few years the offshore petroleum sector has embraced the need for an environmental policy for its activities. New regulations compel industry to pursue environmental objectives at all stages of operations. In parallel, there has been a profound move towards integrated planning and management across all oceans sectors under *Australia's Oceans Policy*.⁵ This new approach to the oceans brought with it high expectations that innovative ways of organizing and executing marine operations would be found. Unfortunately, implementation of this integrated approach has been less than expeditious, and offshore activity continues to proceed largely on a sectoral basis, notwithstanding this integration mandate.

In this context, the 1998 Australian Offshore Petroleum Strategy is a curious expression of policy. On the one hand, the Strategy provides a coherent, decadal framework to foster further development of the oil and gas industry, complete with commitments to this end. On the other hand, though released after *Australia's Oceans Policy*, it failed to elaborate the new oceans agenda, revealing a poor articulation between these two government policies. This article documents these new developments

3. Robert Wilder, "Cooperative Governance, Environmental Policy, and Management of Offshore Oil and Gas in the United States" (1993) 24 *Ocean Devel. & Int'l L.* 41.

4. Constance Hunt, "The Offshore Petroleum Regimes of Canada and Australia" (1990) 9 *Australian Mining and Petroleum Law Association Bulletin* 103.

5. Anthony Bergin & Marcus Haward, "Australia's New Oceans Policy" (1999) 14 *Int'l. J. Mar. & Coast L.* 387.

after providing an abbreviated history of the offshore petroleum regime. It concludes that the oil and gas regime continues to thrive as a model for cooperative governance, although there is considerable scope for further improving harmony with other ocean sectors.

1. *Jurisdictional Settlements and Offshore Petroleum*

Prior to the 1950s, the Commonwealth displayed little interest in managing marine resources.⁶ Management of the oceans therefore fell largely to the states.⁷ In this regard, perhaps the most influential factor in the evolution of offshore policy is the fact that every Australian state possesses a coastline.⁸ All states therefore have very real interests in the offshore and attach considerable importance to maritime industries. Disputes with the Commonwealth only arose in concert with increasing interest in the exploitation of marine resources, in particular, petroleum.⁹

The 1967 Australian Petroleum Settlement was the first attempt to establish an inter-governmental regime for marine resources. The Settlement was designed to provide prospective explorers with security of title but without addressing the question of offshore jurisdiction. To achieve this goal, the 1967 Settlement was based upon the enactment of identical overlapping Commonwealth and state legislation. The Commonwealth's *Petroleum (Submerged Lands) Act 1967* (Cth.) (P(SL)A) applied to waters around the country whereas the state acts applied to those offshore waters adjacent to each state.¹⁰ This mechanism avoided the question of

6 The management of ocean fisheries had traditionally been left to the states despite the Commonwealth having the clear Constitutional authority to legislate in this regard. With respect to the *Fisheries Act 1952* (Cth.), for instance, rather than challenging state control over fisheries this Act created a framework for inter-state fisheries management by vesting in states the federal authority to manage fisheries beyond three miles. See, Anthony James Harrison, "Marine Living Resources Policy in Tasmania" in *Issues in Australia's Marine and Antarctic Policies*, eds., Richard Herr, R. Hall & Bruce Davis, University of Tasmania, Tasmania, 1982 at 69-88.

7 Richard Herr & Bruce Davis, "The Impact of UNCLOS III on Australian Federalism" (1986) 41 *Int'l. J.* 674.

8 Brian R. Opekin & Donald R. Rothwell, "Australia's Territorial Sea: International and Federal Implications of Its Extension to 12 Miles" (1991) 22 *Ocean Devel. & Int'l L.* 395. In addition to the historic role of states as marine resource managers, the Commonwealth was also not a significant land holder. It did not have in place a parallel and easily adaptable system for the disposition of resources. It was natural that regulatory control should fall to the state governments.

9 *Ibid.*, John L. Taylor, "The Settlement of Disputes Between Federal and State Governments Concerning Offshore Petroleum Resources: Accommodation or Adjudication?" (1970) 11 *Harv. Int'l L.J.* 358.

10. *Petroleum (Submerged Lands) Act 1967* (Cth.).

jurisdiction by granting each operator two identical titles. Operators were therefore assured of the validity of at least one in the event of the jurisdiction of either the Commonwealth or States being vacated.

Governments were clearly creative in not clarifying the jurisdiction of the respective spheres. Nevertheless, the role of the states as traditional offshore managers was the most influential factor in shaping the approach to offshore policy in 1967.¹¹ The enactment of overlapping legislation was a powerful admission of possible state jurisdictional competence. Moreover, under the Settlement the Commonwealth largely abdicated to the states its functional capabilities relating to the offshore. The Commonwealth P(SL)A appointed state ministers as Designated Authorities, and vested in these functionaries all the federal powers and functions pertaining to exploration and production.¹² The states therefore exercised Commonwealth decision-making capabilities in addition to administering their own legislation.

Inevitably, this approach to offshore policy perpetuated the states' prominence as decision-makers and resource managers. Following a change of federal government in the early 1970s, a brief attempt to deprive the states of an offshore role proved untenable. At that time, the Commonwealth passed into law the *Seas and Submerged Lands Act* (SSLA) to redefine offshore jurisdiction and remove the States from any offshore role.¹³ The SSLA declared sovereign rights over continental shelf resources vested in the Crown in right of the Commonwealth,¹⁴ and vested in the Commonwealth exclusive sovereignty over the three-mile territorial sea.¹⁵

The States were predictably outraged by the SSLA and enjoined in action in the High Court of Australia.¹⁶ The ensuing case — *New South*

11. Nathan Evans, *Jurisdictional Disputes and the Development of Offshore Petroleum Legislation in Australia* (PhD Thesis, University of Tasmania, 1998) [unpublished].

12. Clause 9 of the Settlement stated that the Common Mining Code—the P(SL)A—would be administered by the Designated Authority in respect of each State, a role defined by the *Petroleum (Submerged Lands) Act 1967* (Cth.) to be the responsible state minister. This arrangement raised a question of Constitutional law that is still yet to be answered: whether the Constitution permits the power to administer a Commonwealth statute to be conferred upon a state minister. The Designated Authority device was created to avoid the judicial review that such a fundamental legal issue would invite. The Commonwealth's P(SL)A refers to the Designated Authority instead of to the state minister directly, to further raising concerns over the Constitutional legitimacy of the Designated Authority.

13. *Seas and Submerged Lands Act 1973* (Cth.).

14. *Ibid.*, s.11.

15. *Ibid.*, s.6.

16. Marcus Haward, "The Australian Offshore Constitutional Settlement" (1989) 13 *Marine Policy* 334 [Australian OCS].

Wales v the Commonwealth -- provided no relief to the States in their quest to recover lost territory. In fact, the judgement was actually a regressive step in their efforts to reassert an offshore personality.¹⁷ Not only was the SSLA upheld in its entirety but the Court determined that the Commonwealth possessed legislative capabilities it had not even contemplated when enacting the law.¹⁸

The politics of offshore federalism were again highlighted following a change of federal government in 1975. Advocating a New Federalism policy, the government sought to reverse the *Seas and Submerged Lands Act* framework and readmit the states to an offshore partnership.¹⁹ As had occurred in 1967, the two spheres of government settled upon a cooperative arrangement, the Offshore Constitutional Settlement (OCS).²⁰

The 1980 OCS for the first time divided the offshore by creating a 3-mile territorial sea and assigning this to the states. Title to the continental shelf beyond reverted to the Commonwealth. Most reviews of the OCS tend to emphasise this division of offshore jurisdiction, and the wider policy dimensions of the arrangement are often understated. More important than the narrow territorial sea issue was the development of sectoral models within the OCS framework which enable the states to share decision-making beyond the three mile limit.

The model adopted for offshore oil and gas was to create a consistent (mirror) regime across state and Commonwealth waters in place of the overlapping regimes which existed previously. The success of the new petroleum regime is attributable to the three roles given to the states.

Within the first three miles the states' jurisdiction is essentially exclusive. The state offshore petroleum legislation vests in the respective state's title over coastal waters, and the power to legislate and regulate petroleum development therein. All states have identical legislation which also mirrors the Commonwealth P(SL)A.

17. *New South Wales v. The Commonwealth* (1975), 135 C.L.R. 337 (H.C.A.).

18. Richard Cullen, *Federalism in Action: The Australian and Canadian Offshore Disputes* (Sydney: The Federation Press, 1990) at 107 [*Federalism*]; Amongst other outcomes, *New South Wales v. The Commonwealth*, *supra* note 17, determined that Commonwealth jurisdiction over the offshore was an incident of federation and had therefore always existed, but had simply not been exercised.

19. *Federalism*, *supra* note 18, Australian OCS, *supra* note 16.

20. Richard Cullen, "Bass Strait Revenue Raising: A Case of One Government Too Many?" (1988) 6 *Journal of Energy & Natural Resources Law* 213 at 226. It was not enough for the Commonwealth to desire to readjust the offshore jurisdictional situation; the judgement with respect to the *Seas and Submerged Lands Act 1973* (Cth.) represented a legal obstacle that had to be overcome before the desired political position could be realised.

State ministers fulfil two roles under the Commonwealth P(SL)A in relation to the continental shelf. The more important role is as a member of the two-person Joint Authority, a decision-making body comprising the Commonwealth and the relevant state minister established in respect of each federal adjacent area.²¹ The Joint Authority is vested with vital functions relating to the initial award and renewal of petroleum instruments²² equivalent to those available to the state minister under the mirror state Petroleum (Submerged Lands) Acts. The regime therefore involves both spheres of government directly in petroleum policy, from leasing through to production decisions.

State ministers also serve as the Designated Authority, continued under the Commonwealth Act but modified from 1967. Under the OCS, the major powers and functions previously exercised by state ministers were transferred to the new Joint Authority.²³ The role of the Designated Authority post-1980 was redefined to be concerned with supporting petroleum recovery rather than with policy decisions. To this end, the Commonwealth P(SL)A assigned to the Designated Authority a range of administrative responsibilities.²⁴ In performing these functions, it needs to be emphasized, the state ministers actually exercise executive powers of the Commonwealth, in addition to those shared as the Joint Authority.

The OCS is an enduring attempt to settle the role of the Commonwealth and states in offshore policy. As suggested earlier, the arrangements reached in 1967 had the effect of firmly emplacing the states as offshore managers. For its part, the federal government came to accept the legitimate place of the states as partners in offshore policy, and was cognizant also of the logistics of offshore activity and the need to involve the states in regulation and control. Clearly then, the states in 1980 continued in an offshore role that reflected both their historic role and the need for assistance in offshore operation. The irony, of course, is that the High Court had denied states this very role.

21. *Supra* note 10, s. 8.

22. J.R.S. Forbes & Andres G. Lang, *Australian Mining and Petroleum Laws* (Sydney: Butterworths, 1987).

23. *Supra* note 10, s. 14.

24. For example, these include the advertisement of blocks, renewal of exploration permits, applications for production licences, and works to be carried out.

II. *Amending the Offshore Petroleum Legislation*

The Petroleum (Submerged Lands) Act 1967 (P(SL)A) has been amended many times since the new settlement was reached.²⁵ Even following the OCS in 1980, for example, the Designated Authority was the functionary empowered to direct production licence holders to increase the rate at which petroleum was being recovered. Put another way, this expansive power available under Commonwealth legislation was exercised solely by state ministers. In 1984, the Commonwealth amended the P(SL)A to replace the Designated Authority by the Joint Authority and to also enable Commonwealth revenue to be taken into account when issuing directions to vary the rate of production.²⁶ In combination, these changes enabled the Joint Authority to tailor individual licence decisions to meet national policy goals, rather than this being a state prerogative without the benefit of a national perspective. Several years later the Commonwealth amended the act to remove other anomalies that persisted from the original 1967 arrangements relating to the location of decision-making powers.²⁷

During the 1990s, following settlement of the roles of the Designated and Joint Authorities, most amendments were designed to clarify operational aspects of the regime. The first such amendments were passed in 1991 to enable the Joint Authority ministers to delegate to agency executives all the Joint Authority powers, including those relating to leasing and development.²⁸ The effect of these amendments was to shift the burden of much decision-making to agencies and relieve ministers of the minutiae of minor decisions.

A number of other amendments were passed over the decade to further elaborate or refine requirements pertaining to exploitation. These included such matters as:

- payment of securities;
- occupational health and safety;
- renewal of pipeline licences;
- the effect of offshore boundary changes on titles;
- new oilfield infrastructure; and
- release of surrendered areas.²⁹

25 Marcus Haward, in B. Galligan, O. Hughes & C. Walsh, eds., *Intergovernmental Relations and Public Policy* (Sydney: Allen and Unwin, 1991) 109.

26 *Petroleum (Submerged Lands) Amendment Act 1984* (Cth.).

27. *Petroleum (Submerged Lands) Amendment Act 1987* (Cth.).

28. *Petroleum (Submerged Lands) Amendment Act 1991* (Cth.).

29. *Petroleum (Submerged Lands) Amendment Acts 1992, 1994, 1997, 1998, 2000* (No. 1 & 2) (Cth.).

Just when it appeared that federalism within the P(SL)A was well settled, the issue of inter-governmental roles was reopened again in 2001.³⁰ At that time, the Joint and Designated Authority roles were again adjusted, reflecting subtle but distinct views, between political parties at the federal level, of inter-governmental relations.

The catalyst, as it was at many junctures of the offshore saga, was a change of federal government. As had occurred in 1975, the Commonwealth took the view that many functions of the Joint Authority should be transferred back to the states as the Designated Authority. The Commonwealth government portrayed the amendments as clarifying roles, minimizing duplication and shifting administrative responsibilities to the states.³¹ The Opposition, advancing its view of the role of the Commonwealth in the P(SL)A regime, rejoined that

although we support the bills, we make a qualification in that we do not agree that it is automatically advantageous to give to the states and territories some of the administrative functions that this bill is referring back to them ...

We know that this government has an ideological bent to refer and give back to the states as much as it can. We think that in many cases that is the wrong way to go and that it is better to keep a national perspective, particularly on petroleum ... [W]e reserve the right to revisit these matters of administration when we are back in government in the near future.³²

It will be interesting to observe the policies of the Commonwealth when the Government next changes. On the one hand, the offshore oil and gas regime has clearly attained a stable and enduring status — or maturity in terms of cooperative governance. Equally, though, the precise blend of Commonwealth/state roles within the P(SL)A regime is still subject to some adjustment by the currents of federalism flowing at a particular time. The best evidence of the regime's maturation is the fact that its foundation shared decision-making by both spheres of government is never questioned as a principle and approach. This stability and durability in turn allows other matters to be addressed albeit belatedly. It is to these developments that this article now turns.

30. *Petroleum (Submerged Lands) Amendment Act 2001* (Cth.).

31. Austl., Commonwealth, House of Representatives, *Parliamentary Debates* (6 December 2000) at 23443.

32. Austl., Commonwealth, Senate, *Parliamentary Debates* (5 April 2001) at 23807.

III. *Australian Offshore Petroleum Strategy*

In 1999, the Government released the Australian Offshore Petroleum Strategy as a framework and commitment to further develop the offshore oil and gas industry on the continental shelf.³³ Over the next five to ten years, the broad objectives of the Strategy are to:

- create more certainty in terms of the future release of areas;
- improve the availability of exploration data; and
- ensure that regulation and fiscal aspects are internationally competitive.

The impetus for the Strategy is the depletion of offshore reserves — at annual rates of 13.6% for crude oil, 4.8% for condensate and 4% for natural gas. Consequently, new reserves need to be discovered if petroleum self-sufficiency is to be maintained. In this regard, the Australian continental shelf has been only lightly explored. For example, three million exploration wells have been drilled in the United States contrasted to just 7400 in Australia; of these, only 1100 are offshore although 90% of Australian oil and gas is sourced from this area.³⁴ Whilst it is possible to extract more petroleum from mature fields, the Strategy identifies frontier areas as holding the greatest prospects for future discoveries. On this matter, Australia's intention to claim an extended continental shelf by 2004 is reiterated.³⁵

The pillar of the Strategy is continuation of the successful area release program, designed to optimize exploration of the continental shelf. Characteristics of the release program include:

- regular annual area releases with two closing dates;
- advance (18 month) notification of new release areas;
- selection of mature, immature and frontier fields;
- the turnover of relinquished, surrendered or cancelled areas; and
- pre-release environmental impact assessment of areas.

The practice has been to offer larger permissions to explore in pioneer areas to encourage reconnaissance and drilling activity. To expedite

33. Austl., Commonwealth, Department of Industry, Science and Resources, *Australian Offshore Petroleum Strategy* (Canberra: Department of Industry, Science and Resources, 1999).

34. *Ibid.*

35. Article 56 of the *United Nations Convention on the Law of the Sea*, 10 December 1982, U.N. Doc. A/CONF.62/122 (UNCLOS) provides for States Parties to claim extended continental shelves (ECS) beyond 200 miles if natural prolongation so allows. Along with other wide margin countries, Australia stands to gain appreciably from this provision of UNCLOS.

exploration and exploitation of individual leased areas, the P(SL)A provides for the surrender of unused areas, conversion of exploration permits to production licences, and mandatory work programming.

The Commonwealth and State governments — as the Joint Authority — decide upon the release program, but expressions of interest from industry “have been a significant factor in deciding the composition of recent releases.”³⁶ The Strategy commits to reviewing the release program every two years, in consultation with industry and the States. It is also recognized that the release program may be varied in response to volatile factors such as the highly globalised nature of the oil industry, new data gathered by industry, and government generated research.

The Strategy emphasizes the importance of the provision of information to policy makers and the public. The P(SL)A requires the provision to government of industry-derived information and its subsequent public disclosure. After the continuous accumulation of data, and with the increasing interest in offshore exploration, revisions to the delimitation of areas offered for release were introduced to maximize the application of geoscientific information. One particular initiative aims to link all open file data repositories, data sets and indexes into a national internet site, with links to the APEC Network of Minerals and Energy Databases. As well, there are efforts to improve and maintain the integrity of data. For its part, the Commonwealth boosted its support of national geophysical offshore mapping by \$33.3 million over four years.³⁷

It is noteworthy that the Strategy reported that Australia’s favourable position as a country for undertaking exploration is partly due to the administration of the offshore petroleum regime. Indeed, the Strategy notes that despite low oil prices and the very competitive market for exploration, Australia is ranked as the second favourite destination for oil and gas investment.³⁸ Despite the administrative functionality of the regime, the Government has committed to further improving the P(SL)A. For example, to encourage the rerelease of areas for exploration, permits will be renewable for a defined period, including the surrender of half the area under tenement. Also, in the event of preferred applicants declining an offer, applicants would be ranked to allow reversion to second placed bids.

The Strategy also proposed the amendment of the P(SL)A to provide

36. *Supra* note 33 at 10.

37. Offshore geophysical mapping is also intended to assist with preparing claims for an ECS under UNCLOS.

38. *Supra* note 33 at 10.

for a new form of title over processing, storage and offloading facilities.³⁹ Complementing this amendment, the term of production licences was made indefinite to replace the existing requirement for periodic renewal.⁴⁰ This change was introduced to cater to major projects such as liquefied natural gas ventures with long lead times, including overseas marketing.⁴¹

Through the Strategy, the Government also announced a substantial reform to the regulation for offshore oil and gas. Its intention is to shift certain provisions from the P(SL)A to regulations promulgated thereunder. The rationale is to build into the regime flexibility for operators wishing to adopt new technologies. Time will reveal the efficacy of this approach, which is not without concerns. There must be assurances that community expectations are not overlooked in accommodating industry innovation. In this light, it is preferable for the protection of the public interest to include these assurances as substantive provisions in the parent act rather than in subsidiary legislation.

Finally, the Strategy refers to the value of guidelines in reducing costs, both to industry in terms of compliance and to the government for administration. Guidelines for production licences were issued in 1997, and those for retention leases and pipeline licences are in the process or being finalised. Consistent with the direction in other countries, guidelines will also be drafted for decommissioning offshore structures.⁴²

IV. *Environmental Policy and Offshore Petroleum*

The promulgation of new environmental regulations in 1999 is the most progressive move by the petroleum sector towards a demonstrably sustainable basis for operations. Preparation of the *Petroleum (Submerged Lands) (Management of Environment) Regulations, 1999* (Cth.) was driven at least in part by new Commonwealth legislation enacted in that same year which both expanded and clarified the Commonwealth's role in protecting and conserving the environment.⁴³ Before this time, the capac-

39. This policy was enacted with passage of the *Petroleum (Submerged Lands) Amendment Act (No. 1) 2000* (Cth.).

40. *Petroleum (Submerged Lands) Amendment Act (No. 1) 1998* (Cth.).

41. *Supra* note 33 at 16.

42. In the beginning of 1998, the International Maritime Organisation resolved that no new offshore oil structure would be deployed on the continental shelf after 1999 unless it was capable of being fully removed.

43. *Petroleum (Submerged Lands) (Management of Environment) Regulations 1999* (Cth.).

ity and willingness of the Commonwealth to intervene in environmental affairs was the subject of perpetual and protracted disputation with the states principally, but also with industry groups and non-government organizations. A number of very high profile disputes between the Commonwealth and the states were in fact determined in court.⁴⁴ The absence of a clear policy position from the Commonwealth as to its roles and responsibilities with respect to the environment was apparent.⁴⁵

As a result of the internecine 1980s and 1990s, the Commonwealth finally determined its position towards the environment with the concept of national environmental significance (NES). Hereafter, the Commonwealth would involve itself in NES matters. NES matters were environmental issues with clear national implications or with international dimensions. The six identified matters of NES are:

- World Heritage areas;
- wetlands of international importance;
- migratory species;
- threatened species and communities;
- the marine environment; and
- nuclear activities.⁴⁶

This new policy was given effect by the enactment of new major legislation, the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC).⁴⁷ The EPBC establishes a battery of mechanisms, many of which are quite creative, to involve the Commonwealth in environmental protection and the conservation of biodiversity. Much of the intervention capacity stems from NES triggers: if an NES matter is potentially impacted by an activity, this triggers Commonwealth environmental assessment and approval by the Environment Minister.

The EPBC approach to environmental protection represents a remarkable contrast to the pre-existing regime. Under the previous legislation, federal environmental impact assessment (EIA) was discretionary and driven by the Minister responsible for Resources. Unsurprisingly, the limitations of that earlier regime were widely recognized and subjected to

44. Gerry Bates, *Environmental Law in Australia*, 4th ed. (Sydney: Butterworths, 1999).

45. K. Walker, ed., *Australian Environmental Policy* (Sydney: New South Wales University Press, 1992).

46. See, Explanatory Memorandum - Environment Protection and Biodiversity Conservation Bill, 1998.

47. *Environment Protection and Biodiversity Conservation Act 1999* (Cth.).

well founded criticism.⁴⁸ In the case of offshore oil and gas, continental shelf developments were virtually excused from Commonwealth environmental oversight. Only once was an offshore proposal subjected to formal EIA: even then the activity in question was a full oilfield development rather than exploration activity, a topic treated in greater detail elsewhere.⁴⁹

In this climate, the EPBC seems almost an affront to the way that offshore oil and gas has traditionally discharged its obligations relating to the environment. All stages of development now potentially trigger EIA, including very tight timing and reporting requirements, and public scrutiny.

In 2002, the first full Environment Impact Statement (EIS) for an offshore petroleum development proposal was prepared under the new legislation, triggered by three NES controlling provisions: threatened species and communities, migratory species, and marine environment.⁵⁰ The EIS exhaustively attempts to document and evaluate the environmental issues associated with the project over its twenty year life. As well as satisfying environmental approval and assessment requirements, the EIS will serve the purpose of meeting other statutory permitting requirements, such as those relating to parks and wildlife under the one comprehensive statute.

In this context, the drafting of regulations under the P(SL)A could be construed as an attempt by the petroleum sector to reclaim some of the jurisdiction surrendered under the EPBC. Essentially, the new P(SL)A Regulations establish an internalized EIA system for the petroleum industry. As stated:

The object of these Regulations is to ensure that any petroleum activity in an adjacent area is carried out in a way that is consistent with the principles of ecologically sustainable development, in accordance with an environment plan that has appropriate environmental performance objectives and standards as well as measurement criteria for determining whether the objectives and standards are met.⁵¹

48. Michael Crommelin, "Commonwealth Involvement in Environment Policy: Past, Present and Future" (1987) 4 *Environmental and Planning Law Journal* 101; Robert J. Fowler, "Environmental Impact Assessment: What Role for the Commonwealth? - An Overview" (1996) 13-4 *Environmental and Planning Law Journal* 246; Jennifer Kiss, "Exploration and Environmental Issues" (1990) 64-5 *Law Institute Journal* 398.

49. Nathan Evans, "Offshore Oil Updates" 15-2 *Australian Mining and Petroleum Law Association Law Bulletin* 116; *supra* note 1.

50. Woodside Petroleum Ltd., "WA-271-P Field Development Draft Environmental Impact Statement" (2002) online: Woodside <<http://www.woodside.com.au>>.

51. *Supra* note 43, r.3.

Petroleum activity is defined very broadly by the Regulations to include all surveying and drilling, construction, installation, operation, modification, and decommissioning of facilities (including pipelines). It also includes storage, processing and transportation of petroleum. Activity also means any proposed activity or stages thereof.⁵²

The regime revolves around the need for an environment plan for any petroleum activity; only activities in conformity with an accepted environment plan may be carried out.⁵³ The Designated Authority may consent to activities outside of the environment plan, but only if no significant additional effects or risks will result.⁵⁴ Similarly, operations must be discontinued if new environmental effects or risks arise, unless the risks are provided for in the environment plan.⁵⁵

There are tight time limits and expectations on the Designated Authority in terms of accepting the environment plan. Under Regulation 11(1), The Designated Authority must accept the plan within 28 days if it:

- a. is appropriate for the nature and scale of the activity; and
- b. demonstrates that the environmental effects and risks of the activity will be reduced as much as reasonably practicable; and
- c. demonstrates that the environmental effects and risks of the activity will be of an acceptable level; and
- d. provides for appropriate environmental performance objectives, environmental performance standards and measurement criteria; and
- e. includes an appropriate implementation strategy and monitoring, recording and reporting arrangements; and
- f. complies with the Act and regulations.⁵⁶

The environment plan can be resubmitted by the operator if it is unsatisfactory, or may be approved in part (for particular stages of petroleum operations), or subject to limitations or conditions.⁵⁷ The Regulations provide considerable elaboration on the contents of environment plans, all of which are familiar to EIA practitioners — the activity and environment must be described, impacts identified and evaluated, and environmental objectives, standards and criteria included.⁵⁸

52. *Ibid.*, rr. 4, 5.

53. *Ibid.*, rr. 6, 7.

54. *Ibid.*, r. 7(3).

55. *Ibid.*, r.8.

56. *Ibid.*, r. 11.

57. *Ibid.*

58. *Ibid.*, r.13.

A commendable addition to the regime is the requirement that an environment plan include an implementation strategy. Several innovative features are worth highlighting. The systems, practices and procedures for meeting objectives and standards must be specified in the implementation strategy. A chain of command delegating roles and responsibilities for implementing the environment plan must be established, as well as measures to ensure that employees and contractors are aware of and trained for implementing the environment plan. Quantitative records of emissions and discharges must also be kept, and monitoring, auditing and reviewing environmental performance are required.⁵⁹ A novel requirement is to identify staff responsible for the environment plans designed to improve accountability for environmental performance.

There are provisions relating to revision of the environment plan. Before making any unanticipated changes to operations, or if significant new environmental risks or effects arise, operators must submit a revised environment plan. The Designated Authority may also demand of an operator a revised environment plan with few fetters. While the Operator may question the need for the revisions, the regime is clearly predisposed towards the Designated Authority.⁶⁰ Environment plans must be revised after five years.⁶¹

The Designated Authority may withdraw acceptance of environment plans on several grounds. Non-compliance with the parent act (the P(SL)A) or directions thereunder may result in withdrawal. In terms of environmental non-compliance, grounds for withdrawal include: failure to comply with the environment plan; continuation of petroleum activities once new risks or effects have emerged; and failure to revise an environment plan once these provisions have been invoked.⁶² Withdrawal of approval is made independent of any prosecution for offences stemming from non-compliance with the Regulations.⁶³

Several miscellaneous regulatory provisions are worth mentioning briefly. Those relating to reportable incidents and record keeping are intended to ensure that the industry maintains, in a retrievable format,

59. *Ibid.*, r. 14.

60. *Ibid.*, r. 18.

61. *Ibid.*, r. 19.

62. *Ibid.*, r. 23.

63. *Ibid.*, r. 25. The penalty for most offences is a fine of \$8800, applied on a continuing basis for the duration of the offence. Also, courts may fine body corporates up to five times the penalty applied to an individual.

authoritative records for assessing the performance of operators.⁶⁴ The regulations also establish an environmental standard for discharges of produced formation water — no more than 50mg/L at any time, and an average of 30mg/L over a one day period.⁶⁵ Finally, there is an emphasis on assigning a single identifiable operator to each petroleum activity.⁶⁶

Although motivated by EPBC assessment and approval requirements, this new regime evidences a clear shift towards an environmental basis for petroleum operations. The demands now placed on the offshore petroleum industry are not trivial and even partial satisfaction will represent a generational commitment towards genuine sustainability of the sector. However, upon closer scrutiny there appear a number of deficiencies with the regime in terms of moving towards better governance for sustainability.

The absence of public input in the environment planning process is the largest deficiency in the regulations. Simply put, there is no requirement to solicit public feedback nor expose drafts for public review. The implementation strategy must provide for "appropriate consultation with other relevant interested persons or organizations" and is the only avenue for public involvement.⁶⁷ However, no public input is sought in developing or approving the environment plan, or with monitoring or reporting environmental performance. One of the very defining characteristics, indeed strengths, of EIA is its very public nature. For this reason alone, it is hoped that environment planning under the P(SL)A Regulations will not be accepted as satisfying the new assessment requirements under the EPBC.

Another worrying aspect of the petroleum assessment regime is that it revolves around the Designated Authority as the approving authority. Concerns with this approach are twofold: a state minister is charged with making decisions in relation to the Commonwealth marine environment, and this minister is a resource minister rather than a minister responsible for the environment. As described above, the Commonwealth has finally clarified its role in environmental policy through enactment of the EPBC. The marine environment is identified as a matter of national environmental significance (NES) and therefore falls within the Commonwealth's bailiwick. However, by making the Designated Authority — a state minister — the competent body, the P(SL)A Regulations represent a contradiction to this approach and send a mixed message regarding Commonwealth

64. *Ibid.*, rr. 26, 27.

65. *Ibid.*, r. 29.

66. *Ibid.*, rr. 30-38.

67. *Ibid.*, r. 14(9)(b).

policy. Indeed, it is surprising that this schizophrenic approach was approved by the Government.

The other concern with the approach is empowering a minister responsible for petroleum development to grant environmental approval. It would be absurd for the Environment and Heritage Minister to administer the P(SL)A Regulations, and this is not suggested. However, the regime would be validated by providing for input from other interested ministers.

A third, broad set of limitations on the petroleum regulations is the lack of provisions regarding public reporting. As described earlier, new demands are imposed on industry regarding the maintenance and provision of records. Unfortunately, there is no provision for reporting to the public on environmental performance through the compulsory monitoring or review of environment plans, nor release of emission or discharge records, nor reportable incidences. Such records are only available to the Designated Authority (including delegates) and inspectors.⁶⁸ The EIS has been superlative in terms of transparency and public consultation, and the proponents are to be commended for their efforts in this regard.⁶⁹ However, in the absence of the EPBC, it is a matter of speculation as to whether the proponents would have been quite so committed to consulting with local community and interested stakeholders.

On balance, the P(SL)A Regulations demonstrate a commitment to improving the environmental performance and sustainability of the offshore petroleum sector. The fact that activities cannot be carried out without an environment plan is a most welcome move. In the context of the expansive EPBC assessment and approval requirements, however, the value in requiring a separate environmental evaluation under the P(SL)A could validly be questioned. The P(SL)A Regulations are most valuable because not all proposals for offshore oil and gas will be subjected to a formal EIA under the EPBC. In these situations, the P(SL)A Regulations will ensure that operators address environmental issues with some degree of rigour and integrity. Therefore, despite some obvious potential for duplication in both process and content, the EPBC and petroleum regulations in combination will contribute greatly towards sustainability of the sector.

68. *Ibid.*, r 28.

69. *Woodside Petroleum Ltd.*, *supra* note 50. In addition to the EIS, the proponent prepared an incredibly detailed report numbering over 100 pages in response to public comment and submissions received during preparation of the EIS. Under the Regulations, the proponent would have been under no obligation to prepare this document and did so because of EIA requirements under the EPBC.

V. *Australia's Oceans Policy*

The Commonwealth Government released *Australia's Oceans Policy* (Oceans Policy) at the end of 1998, to coincide with the International Year of the Oceans.⁷⁰ The importance attached to the marine environment and its resources by the Commonwealth is evidenced by the fact that the Oceans Policy was developed over two years. *Australia's Ocean Policy* is based on the proposition that inter-sectoral conflict and environmental degradation of the oceans has been minimal, due more to good fortune than to functional management arrangements.⁷¹ In anticipation of the inevitable increase in oceans users, with likely corresponding conflicts and loss of environmental quality, the Commonwealth acted to establish a system for oceans planning and management capable of addressing these issues.

Despite the connotations of its title and the fact that it is administered primarily by the Environment and Heritage Minister, the Oceans Policy is not a conservation instrument. The twin pillars of the Oceans Policy are industry development and environment protection. "*Australia's Oceans Policy* is neither solely an environment protection policy nor solely an economic development policy. It is both. It is a Policy for the ecologically sustainable development of our oceans."⁷² The tenet of the Oceans Policy is that only by preserving Australia's oceans will the commercial potential of maritime industries be realized.

To this end, *Australia's Oceans Policy* is distinguished by two approaches designed to ensure the ecological sustainability of the oceans. The most obvious of the two is the shift towards an ecosystem-based management of Australia's oceans. Regional marine plans (RMPs), the core of the Oceans Policy, are the instruments through which this new management paradigm will be designed and delivered.⁷³ Based on large marine ecosystems, the purpose of RMPs is to improve linkages across jurisdictions, between all sectors and uses (commercial, recreational, non-exploitative).⁷⁴ The Oceans Policy states that

Action now to put in place a comprehensive system for integrated ocean planning and management will reduce the risk of a progressive decline

70. Austl., Commonwealth, National Oceans Office, *Australia's Oceans Policy* (Canberra: Main Group, Environment Australia, 1998).

71. *Ibid.*

72. *Ibid.* at 3.

73. *Supra* note 5.

74. *Supra* note 70 at 11.

and irreversible damage to our marine systems. In this way we will be able to prevent environmental, economic, social and cultural losses that would reduce options for the future.⁷⁵

The Oceans Policy provides some policy guidance about regional marine planning. The essential steps are as follows:

- assess ocean resources on a biogeographical basis;
- understand current uses of those resources and emerging pressures;
- evaluate the needs for ecosystem health and integrity, and implications for sectoral activities and conservation requirements;
- propose ocean resource allocations, delivered principally through existing sectors, using multiple-use principles to generate income and employment and to optimize long-term community benefits;
- assess and control external impacts of proposed resource uses;
- monitor the performance of ocean planning and management; and
- maintain responsive flexibility within this broad framework.

Regional marine planning will rely heavily upon environmental, economic and social information. Integrating these data through a single management tool will allow for a structured and orderly allocation of and access to resources across and within sectors. Through this process, it is hoped to both enhance security for maritime industries while retaining management responsiveness to any unforeseen impacts. RMPs will be binding on the Commonwealth and its agencies.⁷⁶

The broad, complementary approach to sustainable oceans use embodied in the Oceans Policy is enhancing sectoral measures and arrangements. A series of project initiatives for all marine sectors are committed within the Oceans Policy, including the offshore oil and gas industry.⁷⁷ The sectoral initiatives recognize that future growth in offshore extractive industries such as petroleum and minerals, is constrained by the availability of capital for high risk investments and long lead times until commercial maturity.⁷⁸ Specific initiatives in the Oceans Policy are generally crafted in recognition of this fact. One such initiative is the commitment to the continued promotion of development by disseminating overseas information about the titling and taxation regimes for offshore development. Simi-

75. *Ibid.* at 8-9.

76. *Ibid.* at 13.

77. Austl., Commonwealth, Commonwealth of Australia, *Australia's Oceans Policy: Specific Sectoral Measures* (Canberra: Environment Australia, 1998).

78. *Supra* note 70 at 26.

larly, the Oceans Policy also commits to developing new technologies for better understanding offshore prospectivity.⁷⁹

In terms of initiatives related to sustainability, the Oceans Policy commits to removing the restriction on establishing marine protected areas (MPAs) over pre-existing leases. Extant legislation prevented an MPA from being declared in respect of an area already the subject of an offshore petroleum title, in deference to the superiority of the latter. Relaxing this restriction will “ensure that the development of the petroleum industry is fully compatible with integrated ocean planning and management ... without compromising pre-existing rights.”⁸⁰ Allowing the co-existence of two forms of tenure or status in an area of the ocean is an essential concept underpinning integrated oceans use.

Other specific sectoral measures are designed to further improve sustainability of the sector. *Australia's Oceans Policy* commits the Commonwealth to developing a policy on the decommissioning and disposal of offshore platforms. The Commonwealth will also continue to gather baseline data and monitor impact assessment outcomes and undertake to continue consulting with stakeholder interests affected by petroleum operations.⁸¹

An elaborate new structure is established to administer and implement the Oceans Policy, and RMPs in particular. The peak decision-making body is the National Oceans Ministerial Board, comprised of six key oceans ministers with responsibilities for fisheries, science, resources, tourism, environment, and transportation. The Board will make decisions relating to RMPs, determine budgetary allocations and expenditures of Oceans Policy funds (more later), and generally promote coordination and delivery of sectoral measures.

A National Oceans Advisory Group (NOAG) comprised of about twenty members, is also created to represent major non-governmental interests and stakeholder perspectives. NOAG is advisory to the Board on broad strategic matters and cross-sectoral and jurisdictional issues. Its unfettered lines of communication to oceans ministers (acting as the Board), provide key oceans users with a line of direct ministerial access.

Regional Marine Plan Steering Committees will be established to oversee the development of RMPs for each of the eight identified large marine

79. *Supra* note 77 at 14.

80. *Ibid.*

81. *Ibid.*

ecosystems found in Australia. These Steering Committees will be expertise-based and include approximately seven members. In conception, at least, the Steering Committees should be instrumental in determining the content of RMPs.

The fourth organ created by the Oceans Policy is the National Oceans Office (NOO), a new agency of the Commonwealth Government. The NOO broadly supports the Board, NOAG and Steering Committees through secretariat services, technical support, and program delivery. As the lead agency for delivering the Oceans Policy, the NOO will largely direct the development of RMPs, and address oceans-related matters on a government-wide basis.

Announcement of the Oceans Policy was accompanied by the release of \$50 million for the first triennium of implementation. Of this amount, \$32.5 million was identified for RMP development while the balance was allocated to deliver a number of sectoral initiatives.⁸² The expectation is that renewal funds will be made available over the out-years, principally for pursuing regional marine planning.

Clearly, *Australia's Oceans Policy* is a substantive exercise in policy-making.⁸³ A new paradigm for oceans use has been adopted and an administrative apparatus appropriate to the new challenges has been created. The Commonwealth has also invested a sizeable sum of money in the venture. Despite these very encouraging elements, the Oceans Policy labours under a number of constraints which have frustrated expeditious delivery of the new oceans program.

Likely problems with the implementation of the Oceans Policy have already been identified in one of the few published assessments.⁸⁴ It was foreseeable that establishing a new federal agency to lead the delivery of Oceans Policy would delay the delivery of initiatives, particularly regional marine planning. *Australia's Oceans Policy* was released at the very end of 1998, with regional marine planning scheduled to commence early the following year and a review of implementation due in mid-2000. As it is, the process to prepare the first RMP did not commence formally until April 2000, and the first tangible output of preparations, a Description Paper, was produced at the end of 2001.

Another of the Oceans Policy's obvious shortcomings is the absence of

82. Senator the Hon. Robert Hill, News Release, "World First Plan to Safeguard our Oceans" (23 December 1998).

83. *Supra* note 5.

84. *Ibid.*

state participation or endorsement. Notwithstanding its name, *Australia's Oceans Policy* is a creation of the Commonwealth for its own use; as stated earlier, it is this jurisdiction which is bound by RMPs. During development of the Oceans Policy there was some hope that it would eventually become truly national. However, towards the end of 1998, much to the chagrin of some observers of the process, it became clear that the Oceans Policy would evolve into a Commonwealth policy. There are disappointingly few initiatives within the Oceans Policy to secure the future involvement of the states. To illustrate, "In developing Regional Marine Plans, the Commonwealth will seek the participation of the relevant States and Territories, to ensure, as far as possible, the integration of planning and management across State and Commonwealth waters."⁸⁵ Efforts over the four years since the Oceans Policy was announced have failed to entice state or territory governments to become parties. At least one commentary doubts that the Commonwealth would act assertively to compel or presume state endorsement.⁸⁶

To a large extent, the challenge of operationalising ecosystem-based management explains implementation failure. Despite a wealth of material exploring the general concept, there are few concrete examples on which to base actual practice. In other words, the task of converting ecosystem-based management from its conceptual basis to prescriptions on the water accounts for much of the delay in developing the first RMP. At a minimum, the traditional management of sectoral uses will be revised or reformed. Without any indication as to the form and content of an RMP, it is no surprise that integrated oceans management has been so slow.

Another fundamental difficulty lies in reconciling the tension between moving towards RMPs on one hand while retaining, even enhancing, existing sectoral arrangements on the other. Existing arrangements with all oceans sectors are preserved due to the stability and workability of the Offshore Constitutional Settlement (OCS) sectoral regimes. At the same time, the purpose of RMPs is to integrate activities across sectors, altering the paradigm and practice of oceans use. The Oceans Policy provides little guidance on how to simultaneously satisfy these two seemingly contradictory mandates.

The Offshore Constitutional Settlement remains the basis for the management of specific sectors across jurisdictional boundaries. However,

85. *Supra* note 70 at 11.

86. *Supra* note 5.

consideration will be given to administrative changes that may be needed so that the full range of cross-jurisdictional issues can be addressed effectively in implementing the Regional Marine Planning process.⁸⁷

Therefore, the outstanding question for all sectoral uses relates to the sort of changes to OCS administration that will be made through RMPs. The alignment of regional marine planning with the P(SL)A regimes is no better elaborated in the particular case of offshore oil and gas. The Government will:

build on existing petroleum and minerals management regimes to incorporate ecosystem and cross-sectoral considerations in an integrated approach to marine resource use and decision-making that is consistent with the principles of ecologically sustainable development and multiple and sequential use; this will be undertaken through the Regional Marine Planning process.⁸⁸

The Oceans Policy suggests that the offshore resource regimes will somehow be adjusted as a result of regional marine planning. The removal or replacement of P(SL)A mechanisms is not on the agenda; these will be adjusted to on an 'integrating basis.' Again, the Oceans Policy provides little guidance to practitioners or administrators in this pursuit.

Legislation will inevitably be needed to deliver RMPs. Instruments issued under the P(SL)A can only be altered through the enactment of superior legislation to compel the integration of oil and gas activities with other sectors. *Australia's Ocean Policy* commits to RMPs as a mechanism for integrating oceans uses. To give effect to this policy, however, there will need to be legislative action.

It is not difficult to appreciate why operators who hold costly permits or licences issued under the P(SL)A may harbour misgivings as to the future security of their costly holdings. Whilst instruments will continue to be issued under authority of the P(SL)A, the extent to which these will yield to the prescriptions of ecosystem-based management under an RMP is unknown. As Bergin and Haward note, RMP preparation could take years to complete meaning these issues will not soon be settled.⁸⁹ In the interests of meeting its twin imperatives of environmental protection and resource

87. *Supra* note 70 at 17.

88. *Supra* note 77 at 13.

89. *Supra* note 5.

development, it behooves all involved to settle the scope of RMPs, and therefore legislative reform, with all expedition.

Conclusion

Despite a chequered history of offshore federalism — a feature common to many federations — the framework for allocating jurisdiction offshore has endured and become established. In this context, the legislation for the oil and gas sector is exemplary in terms of settling the roles of the Commonwealth and states in a cooperative governance regime. New environmental requirements now exist under both petroleum and environment legislation, further highlighting the natural progression of the offshore petroleum regime. As this sector gains experience in administering these two parallel sets of requirements, it will become increasingly worthy of emulation in other federations.

Simultaneously, the advent of *Australia's Oceans Policy* forces all marine users to revisit the precepts of oceans use. It is no longer sufficient to conduct marine activities on a strictly sectoral basis. All oceans users must be organized in such a way that the interactions between sectors, both exploitative and non-consumptive, are identified, anticipated and managed.

Regional marine planning has met with considerable delays since being adopted as Government policy; even those directly involved in the Oceans Policy are concerned with the tardiness of progress.⁹⁰ Delays of this nature have eroded some of the initial enthusiasm that accompanied the release of *Australia's Oceans Policy*. For those less enthusiastic about RMPs, any delay in moving forward with the new oceans regime is no doubt welcomed as it ensures that traditional arrangements will continue unchanged. Indeed, some would argue that the functionality of the sectoral regimes is evidence enough that the system is working and any additional administrative architecture is superfluous.

On the other hand, moving towards cross-sectoral integration does represent a logical next phase in ocean policy, building upon the OCS framework. The basis of the Oceans Policy is that only by integrating activities can the future health of the marine environment and sustainable use of its resources be assured. Regardless of the argument, support for the Oceans

90. Geoff Wescott, "National Oceans Advisory Group Update" (2002) 8 Waves 16.

Policy will erode the longer that it fails to demonstrably deliver. There is a real risk that the entire oceans initiative may disappear from the political agenda.

In any case, *Australia's Oceans Policy* has circumvented debate on the need for integrated oceans planning as the agenda has now been firmly established. What remains to be determined is the actual form that integration of marine activities will take. It is hoped that the cooperative governance tenets characterizing ocean policy over the past two decades will be preserved in the regional marine planning initiative.